IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

RCRev..No. 39 of 2007(F)

RCA.131/2004 of VI ADDL.DISTRICT COURT, ERNAKULAM
RCP.24/2003 of ADDL.MUNSIFF & RENT CONTROL COURT,KOCHI
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PETITIONER/RESPONDENT/RESPONDENT

JOJO, AGED 50, S/O.AUGUSTINE,
PAYYAPPILLY HOUSE, N.P. 11/83, NARAKKAL.

BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
SRI.P.VISWANATHAN
SRI.AJU MATHEW

RESPONDENTS: APPELLANT/PETITIONER

JOSEPH, AGED 72, S/O.VALOORAN PAILEE,
RESIDING AT DOOR NO.P.II, NARAKKAL.

BY ADV. SRI.S.B.PREMACHANDRA PRABHU
SRI.G.SREENIVASA PRABHU

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.C.R. NO. 39/2007

ORDER ON I.A. NO. 322/2007 IN R.C.R. NO. 39/2007

DISMISSED

25.10.2007

SD/- K. BALAKRISHNAN NAIR, JUDGE.

SD/- T.R. RAMACHANDRAN NAIR, JUDGE.

K. BALAKRISHNAN NAIR & T.R. RAMACHANDRAN NAIR,JJ

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R.C.R.No. 39 OF 2007

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Dated this the 25th day of October, 2007.

ORDER

Balakrishnan Nair,J

The tenant is the revision petitioner and the landlord is the respondent. The R.C.P was filed under Sections 11(2)(b), 11(3) and 11(8) of the Kerala Building (Lease & Rent Control) Act. The Rent Controller dismissed the application. The landlord appealed. The appeal was allowed permitting eviction under Sections 11(2)(b) and 11 (3). Though the claim under Section 11(8) was dismissed by the Rent Controller the said decision was not challenged in the appeal.

2. Since the rate of rent is not disputed, there is no serious challenge on the finding under Section 11(2)(b) except the contention that some amount received from the tenant as advance is liable to be adjusted towards the arrears of rent. This is a point which the revision petitioner can raise before the Execution Court during the proceedings under Section 11(2)(c).

3. The main point canvassed before us is regarding the sustainability of finding under Section 11(3). The brief facts necessary for the consideration of the said point are the following:-

The landlord was running a small jewellery shop in a small room in his residential building which is by the side of the public road. Since the jewelery business was not profitable, he has stopped it and presently he is running there a shop selling vessels, utensils etc. of brass, copper and aluminium etc. Since the present room housing the business establishment is part of his residential building, he would like to shift it to the petition schedule building which is part of a line building owned by him. Altogether, there are 4 rooms in that line building of which two are occupied by tenants and two are occupied by his son for doing business. One of the rooms occupied by the tenants is the petition schedule room. He bona fide requires the said room for his own occupation. The tenant resisted the said claim stating that the said requirement is not bona fide. He has been running the business in the present premises for a long period. So he can continue there. The claim that he requires additional accommodation for residential purpose and the rooms available are not sufficient for residential purpose is made without any basis. He has got ample space for doing the business in the present building. There are two other rooms adjacent to the existing room in the possession of the petitioner. If the petitioner wants to expand his business, the said rooms can be

used. The tenant also disputes the statement of the landlord regarding the floor area of the present room in his possession. It is also stated that by the side of the room in which the landlord's son is doing business, there is vacant space. The landlord can use that space for running business.

4. From the side of the petitioner, PWs 1 and 2 were examined and Exts. A1 to A4 were marked. From the side of the tenant, he got himself examined as RW1. Ext. C1 commission report and Ext. C1(a) sketch were marked. The Rent Controller found that the petitioner is residing in a very large building. There is sufficient accommodation for the use of his family members. So the need to shift the existing business from his residential building is made without bona fides. It is also found that there is a charthu behind the line building. The said charthu/room can also be used for running the business. So the claim of the landlord under Section 11(3) was held to be not bonafide based on the above said two facts. Both the limbs under the 2nd proviso to Section 11(3) was found in favour of the landlord by the Rent Controller also.

5. The appellate authority found that the residential building is a small building having a total plinth area of 650 sq. feet. So the need

urged by the landlord to shift his business from the portion of the residential building is bonafaide and genuine. It was also found that the charthu/room in possession of the landlord is not suitable for starting the business. So the claim made by the landlord was found to be bonafide. The Rent Controller's finding under the 2nd proviso was upheld by the appellate authority also.

6. In this case, the learned counsel for the revision petitioner mainly attacked the finding of the appellate authority that the need of the landlord is bonafide. The learned counsel for the petitioner pointed out that the landlord was doing the business for the last 14 years in the existing premises. Therefore, the claim for a new space is made without any bonafides. Further, the landlord's son is occupying two rooms in the line building and he is engaged in a business similar to that of the one run by the landlord. Therefore, it is unnecessary for the landlord to start the very same business in the adjacent room. It is also canvassed that the landlord was an old person. So, it is unnecessary for him to shift the business. The finding regarding the bonafides is, therefore, unsustainable, it is submitted.

7. We find it difficult to accept the above contentions of the counsel for the revision petitioner. Even if the landlord is an old man

there is nothing wrong in his claim that he wants to shift the business to a more convenient place. The fact that his son is engaged in a similar business is not a bar to the petitioner to do the same business in an adjacent room. Further the charthu/room found to be vacant is behind the line building and the same cannot be put to use for business purpose as the same does not face the adjacent road. The learned counsel for the petitioner also took us through the relevant portion of the deposition of the witnesses dealing with the bona fide requirement. But, we find that the finding of the appellate authority on this point is supported by materials on record and the reasonings for the finding are sound. We fully agree with the reasons and conclusions of the appellate authority. In the result, the attack made by the revision petitioner against the finding under Section 11(3) rendered by the appellate authority fails.

The learned counsel for the petitioner prayed for some time to vacate the premises as he is running a business. Having regard to the facts of the case, the petitioner is granted six months time from today to vacate the premises on condition that he files an unconditional undertaking in the form of an affidavit before the Execution Court undertaking to vacate the premises within six months from today. He

shall continue to pay the rent payable from time to time till the room is vacated. The affidavit in this regard shall be filed within three weeks from today.

K. BALAKRISHNAN NAIR, JUDGE.

T.R. RAMACHANDRAN NAIR, JUDGE.

rv

K. BALAKRISHNAN NAIR &
T.R. RAMACHANDRAN NAIR, JJ

O.P. NO. 21 of 2004

25th day of October, 2007

JUDGMENT